

§ 212.7 Written contracts with charterers.

Every agreement to perform a charter trip shall be in writing and signed by an authorized representative of the foreign air carrier and the charterer prior to operation of a charter flight: *Provided*, That where execution of a contract prior to commencement of flight is impracticable because the charter has been arranged on short notice, compliance with the provision hereof shall be effected within 7 days after commencement of the flight. The written agreement shall include, without limitation:

(a) Date and place of execution of the contract or agreement;

(b) Signature, printed or typed name of each signatory, and official position of each;

(c) Dates of flights and points involved;

(d) Type of aircraft and its capacity stated as the number of passenger seats or pounds of cargo capacity available;

(e) Rates, fares, and charges applicable to the charter trip, including the charter price, live and ferry mileage charges, and layover and other non-flight charges;

(f) The name and address of either the surety whose bond secures advance charter payments received by the carrier, or of the carrier's depository bank to which checks or money orders for the advance charter payments are to be made payable as escrow holder pending completion of the charter trip; and

(g) A statement that unless the charterer files a claim with the carrier, or, if the carrier is unavailable, with the surety, within 60 days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip (see § 212.12(c)).

(Approved by the Office of Management and Budget under control number 3024-0036)

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§ 212.8 Terms of service.

(a) The carrier shall require full payment of the total charter price, including payment for the return portion of a

round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation: *Provided, however*, that in the case of a passenger charter for less than the entire capacity of an aircraft, the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, from the passenger charterers not less than 10 days prior to the commencement of any portion of the transportation, and such payment shall not be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this section, payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

(b) Where four or more round trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, one-way passengers shall not be carried except that up to 5 percent of the charter group may be transported one way in each direction, there shall be no intermingling of passengers, and each group shall move as a unit in both directions, except as provided in § 212.9. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid this 5 percent limitation.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1275, 47 FR 137, Jan. 5, 1982]

§ 212.9 Substitute transportation in emergencies.

(a) A carrier shall be permitted to transport a passenger on a charter flight with a group other than his or her own or on a ferry flight (as defined in § 241.03 of this chapter) under the following circumstances:

(1) The transportation is for return passage only;

(2) The passenger is required to return at a time different from that of his or her own charter flight due to emergency circumstances beyond the passenger's control; and

(3) The charter group with which the passenger is to travel expresses no objection to his or her participation in the charter flight.

(b) For the purposes of this section, “emergency circumstances beyond the passenger’s control” include, but are not limited to, illness or injury to the passenger or a member of his or her immediate family, death of a member of the passenger’s immediate family, or weather conditions or unforeseeable and unavoidable delays in ground transportation or connecting air transportation.

§ 212.10 Payments to persons receiving commissions.

Payments for a U.S.-originating charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission for that flight shall be considered payments to the carrier.

§ 212.11 Filing requirements for adherence to Montreal Agreement.

It shall be a condition upon the holding of a foreign air carrier permit or other authority authorizing direct foreign charter air transportation that the holder have and maintain in effect and on file with the Board a signed counterpart of CAB Agreement 18900 (CAB Form 263), and comply with all other requirements of part 203 of this chapter. That form can be obtained from the Publications Services Division, Civil Aeronautics Board, Washington, D.C. 20428.

(Approved by the Office of Management and Budget under control number 3024-0064)

[ER-1329, 48 FR 8049, Feb. 25, 1983, as amended by ER-1341, 48 FR 31014, July 6, 1983]

§ 212.12 Protection of customers’ deposits.

(a) Except as provided in paragraph (c) of this section, no foreign air carrier shall perform any charter trip (other than a cargo charter trip) originating in the United States or any overseas military personnel charter trip, as defined in part 372 of this chapter, nor shall such carrier accept any advance payment in connection with any such charter trip, unless there is on file with the Board a copy of a cur-

rently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with any such charter trip to be performed by said carrier shall be deposited with and maintained by the bank, as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or his agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the charterer (or its agent): *Provided, however,* That where the charter transportation to be performed by a carrier is sold through a travel agent, the agent may be authorized by the carrier to deduct its commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed: *Provided, however,* That the bank may be required by the terms of the agreement to pay over to the carrier a specified portion of such escrowed funds, as payment for the performance of the outbound segment of a round-trip charter upon the carrier’s written certification that such segment has been so completed.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer or its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties as provided in the charter contract) which the bank holds with respect to such canceled charter: *Provided, however,* That, in the case of a split charter, escrowed funds shall be